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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-191240

DATE: March 10, 1978

MATTER OF: Electro-Coatings, Inc.

DIGEST:

Failure to acknowledge amendment containing Service Contract Act wage determination may not be waived as minor informality under FPR § 1-2.405 since bidder could not be required to pay prescribed rates notwithstanding bidder may already be paying such rates.

Electro-Coatings, Inc. (ECI), has protested the rejection of its bid under invitation for bids (IFB) No. GSW-6FWR-80027, issued by the General Services Administration (GSA).

The IFB for electrostatic painting services was issued on December 27, 1977, without a Service Contract Act wage determination and advised bidders "If the Wage Determination applicable to this Solicitation is received prior to 10 days before bid opening, an amendment to this Solicitation will be issued." On January 5, 1978, an amendment to the IFB was issued containing the wage determination. On January 24, 1978, bids were opened and ECI's bid failed to acknowledge and return the amendment. By letter of February 15, 1978, the contracting officer rejected ECI's bid as nonresponsive.

Counsel for ECI argues that the failure to acknowledge the amendment should be waived as a minor informality under Federal Procurement Regulations § 1-2.405 (1964 ed. circ. 1) as ECI was already paying its workers the rates contained in the wage determination, it was committed to the act from the

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signing of the original IFB which applied the act's provisions and the amendment had no effect on the price, quantity, quality or delivery of ECI's bid. Further, ECI states that it did not acknowledge the amendment because of mishandling administratively within ECI.

In B-176399, January 9, 1973, we considered all of the contentions now being raised by ECI and found the rejection of the bid as nonresponsive to be proper. That decision held that the failure of a bidder to acknowledge a wage determination amendment may not be waived as a minor informality in bid under accepted procurement practice, since the bidder could not be required to pay the prescribed wage rates notwithstanding that he may already be paying the same or higher rates under agreements with labor unions or other arrangements.

Accordingly, the protest is denied.

R. F. Kellam
Deputy Comptroller General
of the United States